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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,262	11/03/2003	Gary Stephen Moore	700650-1002	3697

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EXAMINER

HAYES, BRET C

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/700,262

Applicant(s)

MOORE ET AL. 

Examiner

Bret C Hayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☒ Claim(s) 2,4,8 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Claim Objections*

1. Claims 2 and 9 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The claims recite the previously recited limitation of pyrethrum.
2. Claims 4 and 8 is objected to because of the following informalities: claim 4, line 3, "comprising" should be --comprises--; and claim 8, line 1, "steps" should be --step--; and line 2, insert --on-- between "nozzle" and "the". Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1 – 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 1 recites the limitations "the insect control system" in lines 6 and 9, "the underlying surface" in lines 6 and 7, and "the discharge pressure" and "the time duration" both in line 27. There is insufficient antecedent basis for these limitations in the claim.
6. Claims 2 - 6 recites the limitation "The transportable...system" in lines 1 and 2 of each. There is insufficient antecedent basis for these limitations in the claims.

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7. Claim 7 recites the limitations "the underlying surface" (2X) in lines 6, 7 and 10, "the handle" (2X) in lines 8 and 9, "the discharge nozzle" (2X) in lines 23 and 24, and "the pyrethrum" in line 30. There is insufficient antecedent basis for these limitations in the claim.

8. Claim 8 recites the limitations "the discharge" in lines 4 and 5, and "the nozzle" in line 6. There is insufficient antecedent basis for these limitations in the claim.

9. Claim 14 recites the limitation "the discharge nozzle" in line 3. There is insufficient antecedent basis for this limitation in the claim.

10. Any unspecified claim is rejected as being dependent upon a rejected base claim.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 2,201,995 to Erickson.

13. Erickson discloses the claimed invention including: a frame 2; at least one wheel 3 mounted on the frame 2; a handle 5 supported on the frame 2; a tank 1 mounted on the frame 2; a housing 11 supported on the frame 2; at least one discharge arm 10 supported on the housing 11; a discharge nozzle 8 mounted at the distal end of the arm 10; a pump 6 supported on the frame 2, which discharges pyrethrum, set forth at col. 1, line 40 (1:40); a control system 49 mounted within the housing 11; and means for supplying operating power, 20 and the operator, to the pump 6 and the control system 49.

***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 3, 6 – 10, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Erickson.

16. Re – claim 3, Erickson discloses the claimed invention except for the chemical agent comprising CEDARCIDE®. It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute pyrethrum with CEDARCIDE®, since the equivalence of pyrethrum and CEDARCIDE® for their use in the insect control art and the selection of any known equivalents to pyrethrum would be within the level of ordinary skill in the art.

17. Re – claim 6, Erickson discloses the claimed invention except for a plurality of discharge arms. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a plurality of discharge arms, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

18. Concerning method claims 7 – 10, 13 and 14 in view of the structure disclosed by Erickson as applied above, the method of operating the device would have been inherent, since it is the normal and logical manner in which the device could be used.

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19. Claims 4, 5, 11 and 12 are rejected under 35 U.S.C. § 103 as being unpatentable over Erickson in view of US Patent No. 1,926,579 to Burgess et al. (*Burgess*).

20. Re – claim 4, Erickson discloses the invention substantially as claimed as applied above, and including the tank 1 comprising an integral structure. However, Erickson does not disclose the tank 1 being at least partially received within the housing.

Burgess teaches a tank 1 being received at least partially within a housing, best seen in Fig. 1, for example, in the same field of endeavor for the purpose of containing pyrethrum.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Erickson to include the tank being at least partially received within a housing as taught by Burgess in order to contain pyrethrum.

21. Re – claim 5, Erickson discloses the claimed invention except for the tank comprises an integral component of the housing. In view of the structure disclosed above with regard to claim 4, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the tank an integral component of the housing, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1983). Further, it has been held that the term “integral” is sufficiently broad to embrace constructions united by such means as fastening and welding. *In re Hotte*, 177 USPQ 326, 328 (CCPA 1973).

22. Concerning method claims 11 and 12 in view of the structure disclosed by Erickson in view of Burgess as applied above, the method of operating the device would have been inherent, since it is the normal and logical manner in which the device could be used.

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***Conclusion***

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (703) 305 – 7421. The fax number is (703) 872 – 9306.

bh

9/1/04

A handwritten signature in black ink, appearing to read "Teri P. Luu".

**TERI P. LUU**  
**SUPERVISORY PRIMARY EXAMINER**